

§ 2.214 Probable cause hearing and determination.

(a) *Hearing.* A supervised releasee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission no later than five days from the date of such retaking. A releasee who is retaken and held in custody outside the District of Columbia, but within the Washington D.C. metropolitan area, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission within five days of the releasee's arrival at a facility where probable cause hearings are conducted. The purpose of a probable cause hearing is to determine whether there is probable cause to believe that the releasee has violated the conditions of supervised release as charged, and if so, whether a local or institutional revocation hearing should be conducted. If the examiner finds probable cause, the examiner shall schedule a final revocation hearing to be held within 65 days of the releasee's arrest.

(b) *Notice and opportunity to postpone hearing.* Prior to the commencement of each docket of probable cause hearings in the District of Columbia, a list of the releasees who are scheduled for probable cause hearings, together with a copy of the warrant application for each releasee, shall be sent to the D.C. Public Defender Service. At or before the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of the probable cause hearing, the examiner shall advise the releasee that the releasee may accept representation by the attorney from the D.C. Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the releasee may request the Commission to require the

attendance of adverse witnesses (*i.e.*, witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the releasee meets the requirements of § 2.215(a) for a local revocation hearing. The releasee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) *Review of the charges.* At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.212(b) has been given to the releasee. The examiner shall then review the violation charges with the releasee and shall apprise the releasee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the releasee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the releasee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the releasee. At a postponed probable cause hearing, the examiner shall also permit the releasee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses (or counsel in the case of a probable cause hearing conducted outside the District of Columbia), the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) *Probable cause determination.* At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the releasee has violated the conditions of release as charged, and shall so inform the releasee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the releasee be released from the custody of the warrant and either reinstated to supervision, or discharged from supervision if the term of supervised release has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the releasee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by §2.215(a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the releasee's arrest. After the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The releasee (or the releasee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) *Institutional revocation hearing.* If the releasee is not eligible for a local revocation hearing as provided by §2.215(a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the releasee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within 90 days of the releasee's retaking.

(f) *Digest of the probable cause hearing.* At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the releasee, and the examiner's findings as to probable cause.

(g) *Release notwithstanding probable cause.* Notwithstanding a finding of probable cause, the Commission may order the releasee's reinstatement to

supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the releasee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) *Conviction as probable cause.* Conviction of any crime committed subsequent to the commencement of a term of supervised release shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke supervised release.

(i) *Combined probable cause and local revocation hearing.* A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the releasee's arrest and the releasee has been notified that the postponed probable cause hearing will constitute the final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) *Late received charges.* If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing to determine if the new charge is contested by the releasee and if witnesses must be presented at the revocation hearing;

(2) Notify the releasee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.